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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

1991 APR -9 PM 3:49

DOCKET SECTION

In the matter of

Aviation Security:
Passenger Manifest Information

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) Docket 4383
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MOTION AND COMMENTS OF NIGERIA AIRWAYS LIMITED

Comments with respect to this
document should be sent to:

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April 9, 1991

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Aviation Security:
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MOTION AND COMMENTS OF NIGERIA AIRWAYS LIMITED

Nigeria Airways Limited ("Nigeria"), the flag carrier of Nigeria, hereby moves requests, pursuant to Rule 302.4(f) of the Department's Rules of Practice, for permission to file the within Comments in this Docket, noting that the Advance Notice of Proposed Rulemaking ("ANPRM") of January 31, 1991 specifically stated that the Department would accept comments filed after the February 19, 1991 deadline announced therein. Nigeria, due to the need to communicate with its home office on this matter, was not able to prepare these comments by the deadline set forth in the ANPRM.

Comments

The ANPRM invited comments on the question of whether the passenger manifest requirements it was proposing should be imposed on foreign carriers serving the United States. Nigeria urges that these requirements not be applied to foreign air carriers. Nigeria therefore supports the comments already filed in this Docket by

Lineas Aereas Paraguayas ("LAP") British Airways PLC, Japan Air Lines Company, Ltd., Swissair, Swiss Air Transport Company, Ltd., and Air India and opposes (except as detailed below), the comments of the Air Transport Association ("ATA").

The legislation authorizing these proposed regulations, the Aviation Security Improvement Act of 1990, Pub. L. 101-604 (Nov. 16, 1990), applied to only U.S. carriers and merely directed the Secretary of Transportation to consider extending these requirements to foreign air carriers. Nigeria respectfully submits that this Congressionally-imposed limitation was well founded.

There are serious questions about the ability of the United States to impose these restrictions on the operations of foreign air carriers outside the United States. See generally, § 403 of the Restatement (Third) of Foreign Relations Law and Comment a. thereto (both U.S. and foreign governments generally refrain, as a matter of international obligation, from exercising their jurisdiction where it would be unreasonable to do so). Nigeria is particularly concerned that the ANPRM seems to contemplate extraterritorial application of these regulations not just with respect to flights to the U.S. but with respect flights between two foreign points as well.

Nigeria respectfully submits that to carry out the mandate of the legislation, the Department of State should consult on a bilateral basis with its international aviation partners, or on a multilateral basis through the International Civil Aviation Organization ("ICAO"). ATA itself, despite its position that they should apply to foreign air carriers, acknowledges the importance and sensitivity of the extraterritoriality issues presented by the proposed regulations, see ATA Comments at 9-10 and 15, and urges the U.S. Government to negotiate these issues with the various other sovereigns concerned.

Nigeria's internal reservation system does not now provide for recording all the information required by the ANPRM. Collecting and storing such information would therefore be extremely burdensome, if not impossible, for Nigeria. In addition, it might be extremely difficult for Nigeria, even if it were able to collect such information, to have it available to present to State Department officials within one, or at the most, three hours of an aviation disaster. Unreliable telecommunications between Nigeria and the U.S. make transfer of such information an uncertain process at best. Moreover, it would impose an unconscionable burden and unjustifiable expense on Nigeria to require it to pass such information on to U.S. carriers for passengers who begin their journeys on Nigeria and then

switch to domestic carriers to continue their journeys once they reach the United States. Even if Nigeria were able to meet the requirements proposed, its compliance would offer little benefit in the event of an aviation disaster. As with LAP, few of Nigeria's passengers are U.S. citizens and it is highly unlikely, if there were an aviation disaster, that the U.S. State Department would be viewed by Nigeria's passengers as the primary (or even an appropriate) source of information.

WHEREFORE, for all of the foregoing reasons, Nigeria urges that the Department not impose these proposed regulations on foreign air carriers.

Respectfully submitted,


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April 9, 1991

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by first-class mail, postage prepaid this 9th day of April, 1991 to the following parties:

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